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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/673,972      | 09/29/2003  | Rodney Richards      | VERPP 1-1           | 2591             |

7590 03/24/2004  
RODNEY RICHARDS  
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UNITED KINGDOM

EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/673,972

Applicant(s)

RICHARDS, RODNEY

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- application filed 9/29/03*
- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/29/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

*K. L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

### **Detailed Action**

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. The disclosure is objected to under 37 CFR 1.121(e) because the Latin name of the genus and species of the claimed plant and Variety Denomination of the claimed plant should be preceded by a heading as set forth in 37 CFR 1.163(c)(4)(5) and 37 CFR 1.163(d). This information should be set forth before the "BACKGROUND OF THE INVENTION" section as set forth in 37 CFR 1.163(c).

**Detailed Action**

B. Page 3, line 8, Applicant states leaves are "Acute". However, it is unclear whether applicant intends acute to describe the leaf shape, apex, or other. Applicant should set forth in the specification additional information relative to the instant plant's leaves including the typical and observed leaf shape, apex, margin, and base descriptors.

C. Page 3, lines 12 and 13, Applicant should set forth in the specification additional information relative to the instant plant's branches including the typical and observed branch length, diameter, internode length and coloration with reference to the employed color chart.

D. Page 3, line 15, Applicant should set forth in the specification additional information relative to the instant plant's pedicel including the typical and observed pedicel coloration with reference to the employed color chart.

E. Applicant should set forth in the specification information relative to the instant plant's flower buds including the typical and observed flower bud shape, length, diameter, and coloration with reference to the employed color chart.

**Detailed Action**

F. Page 3, lines 16 and 17, Applicant should set forth in the specification additional information relative to the instant plant's flower including the typical and observed flower depth and fragrance.

G. Applicant should set forth in the specification the lastingness of an individual bloom, on the plant.

H. Page 3, line 18, to page 4, line 2, Applicant should set forth in the specification additional information relative to the instant plant's petals including the typical and observed petal shape, length, width, and apex, base, and margin descriptors.

I. Page 3, lines 18 and 19, Applicant states "young flowers" and "old flowers". It appears applicant may have intended to state petals rather than flowers, however, it is uncertain. Applicant should set forth in the specification the typical and observed petal colorations (both surfaces) with reference to the employed color chart.

J. Page 4, line 3, Applicant should set forth in the specification additional information relative to the instant plant's sepals including the typical and observed sepal shape and apex, base, and margin descriptors. In addition, applicant sets forth a sepal coloration, however it is uncertain

**Detailed Action**

whether the coloration set forth is for the upper, lower, or both sepal surfaces. Applicant should set forth in the specification a color designation for the upper and lower sepal surfaces with reference to the employed color chart.

K. Page 4, line 4, Applicant should set forth in the specification additional information relative to the instant plant's bracts including the typical and observed bract number, shape, and apex, base, and margin descriptors. In addition, applicant sets forth a bract coloration, however it is uncertain whether the coloration set forth is for the upper, lower, or both bract surfaces. Applicant should set forth in the specification a color designation for the upper and lower bract surfaces with reference to the employed color chart.

L. Applicant should set forth in the specification the typical and observed number of pistils per flower.

M. Page 5, The Claim, Applicant should insert - -plant- - after "*Verbascum*" as The Claim must be directed to "the plant" (37 CFR 1.164, MPEP 1605). In addition, rather than the claim set forth, applicant could simplify the claim - -A new and distinct *Verbascum* plant named 'Pink Petticoats', as illustrated and described.- -. This claim encompasses the entire plant in which its characteristics are described in the specification and illustrated in the drawings.

### **Detailed Action**

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

### **Claim Rejection**

#### **35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

### **Comments**

Applicant should note the new amendment format which is now mandatory (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Applicant should send all correspondence to the following address:

COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450



Serial Number: 10/673,972  
Art Unit: 1661

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### **Detailed Action**

### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

**KENT BELL**  
**PRIMARY EXAMINER**

